

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

NATHAN GENZER,

Plaintiff

§

§

vs.

§

Civil Action No.

ROBERT PIERCE, TEXAS,

Defendant

§

§

United States Courts
Southern District of Texas
FILED

MAR - 1 2013

David J. Bradley, Clerk of Court

DEFENDANT ROBERT PIERCE'S NOTICE OF REMOVAL

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TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Defendant, ROBERT PIERCE, and pursuant to 28 USC §§1441(b), 1443, and 1446(a) hereby files this Notice of Removal of the above captioned matter from the 130th Judicial District Court of Matagorda County Texas to the United States District Court for the Southern District of Texas, Galveston Division. Defendant will show the Court the following:

I.

Attached hereto and made a part hereof is "Plaintiff's Original Petition," Cause Number 13-E-0057-C, styled Nathan Genzer v. Robert Pierce with the citation issued by the District Clerk of the 130th District Court of Matagorda County, Texas. Attached hereto are copies of all pertinent documents required by Southern District of Texas.

II.

Defendant removes this action to Federal Court because it is a civil rights action against a Matagorda County Sheriff's deputy and therefore contains a federal question that is removable pursuant to 28 USC §1441.

Plaintiff alleges that Defendant was "acting in their capacities as deputies" (Plaintiff's Original Petition, Paragraph V.) and that Defendant deprived Plaintiff of his "civil rights guaranteed to Plaintiff as a citizen of the United States under it's Constitution and amendments." (Plaintiff's Original Petition, Paragraph VI.1). Plaintiff further alleges that Defendant trespassed upon Plaintiff's property, falsely imprisoned Plaintiff, and intentionally caused bodily injury to Plaintiff.

Plaintiff alleges a civil rights cause of action, presumably under 42 USC §1983, against Defendant which arose during a time that Defendant was acting in his capacity as a Sheriff's Deputy of Matagorda County; therefore, this cause of action is removable to Federal Court.

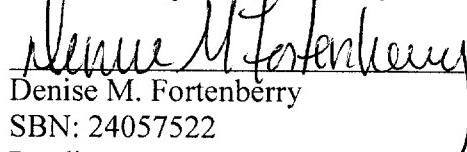
III.

Defendant was served with a copy of the Plaintiff's Original Petition on February 7, 2013, and timely files this Notice of Removal before the expiration of 30 days from the date of service.

WHEREFORE, PREMISES CONSIDER, Defendant files this Notice of Removal with the Court, pursuant to Rule 28 United States Code 1446.

Respectfully Submitted,

Matagorda County Attorney


Denise M. Fortenberry
SBN: 24057522
Pending Pro Hac Vice
1700 Seventh Street, Rm 305
Bay City, Texas 77414
Phone: (979) 244-7645
Facsimile: (979) 244-7647
attorney@co.matagorda.tx.us

CERTIFICATE OF SERVICE

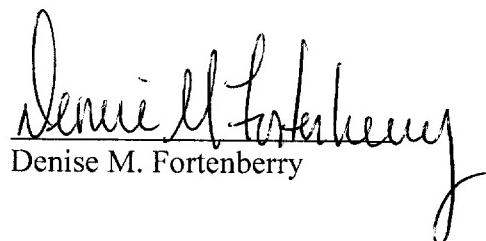
I hereby certify that on the 1st day of March, 2013, a true and correct copy of the foregoing Notice of Removal was filed with the Clerk of Court and that a copy of same was sent to the following individuals in the manner indicated.

JIM ALAN ADAMS
2233 Avenue G,
Bay City, Texas 77414

Via Certified US Mail Art. No. 7011 2000 0000 8864 6809
Via fax at (979) 245-0669

Becky Denn, District Clerk
1700 Seventh St. Room 307

Via Hand Delivery


Denise M. Fortenberry

NO. 13-E-0057-C

NATHAN GENZER § IN THE DISTRICT COURT OF
§
§ VS. § 130th JUDICIAL DISTRICT
§
ROBERT PIERCE § MATAGORDA COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES NATHAN GENZER hereinafter referred to as "Plaintiff," and complains of ROBERT PIERCE, hereinafter referred to as "Defendant," and for cause of action would show as follows:

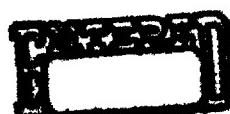
I.

Plaintiff, NATHAN GENZER, intends to conduct discovery under Level 2 as provided in Rule 190 T.R.C.P.

II.

Plaintiff, NATHAN GENZER, resides at P.O. Box 513, Markham, Texas 77456. The last three digits of Plaintiff, NATHAN GENZER'S Social Security number are 529 and the last three digits of Plaintiff, NATHAN GENZER'S Texas driver's license number are 141.

Defendant, ROBERT PIERCE, is an individual residing in Matagorda County, Texas, and upon whom service may be had by serving said Defendant at his place of employment at Matagorda County Sheriff's Office, 2323 Avenue E, Bay City, Matagorda County, Texas 77414, or wherever he may be found.



III.

The Court has jurisdiction in that it involves a claim between two citizens of the state and county.

IV.

Venue is proper in that the incident made the basis of this suit occurred in this county.

V.

On or about February 3, 2011, Plaintiff was in his home visiting friends when Defendant and another sheriff's deputy acting in their capacities as deputies, unlawfully entered Plaintiff's premises and assaulted Plaintiff. The attack was unjustified. Defendant then arrested Plaintiff which was also an illegal act.

VI.

Defendant is liable to Plaintiff for damages for his conduct causing injury and damages to the Plaintiff in the following regards:

1. In depriving Plaintiff of his civil rights guaranteed to Plaintiff as a citizen of the United States under its constitution and amendments;
2. In trespassing upon Plaintiff's property;
3. In falsely imprisoning Plaintiff; and
4. In intentionally causing bodily harm to Plaintiff.

Defendant is not immune from the action due to his acting outside of his role as a deputy which dissolves any privileges he may have.

Defendant is liable to Plaintiff for all damages proximately caused by Defendant's intentional conduct.

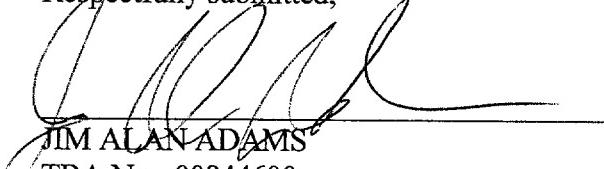
VII.

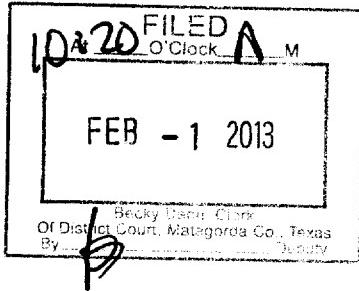
The acts alleged by Plaintiff by Defendants were malicious, illegal and unwarranted, consequently, Defendant violated Plaintiff's civil rights and used excessive force in carrying out this unlawful arrest. The charges were subsequently dismissed.

WHEREFORE, Plaintiff, NATHAN GENZER, prays that the Defendant, ROBERT PIERCE, be cited in terms of law to appear and answer herein, and that, on final trial, Plaintiff, NATHAN GENZER, have:

1. Judgment against the Defendant, in a sum within the jurisdictional limits of this Court;
2. Prejudgment and postjudgment interest as provided by law;
3. Costs of Court; and,
4. Such other and further relief to which Plaintiff may be justly entitled for which she will forever pray.

Respectfully submitted,


JIM ALAN ADAMS
TBA No. 00844600
2233 Avenue G
Bay City, Texas 77414
PHONE: 1-979-245-5349
FAX #: 1-979-245-0669
Attorney for Plaintiff,
NATHAN GENZER



CITATION**13-E-0057-C**

CLERK OF THE COURT
Becky Denn, District Clerk
1700 Seventh St., Room 307
Bay City, TX 77414-5092

ATTORNEY FOR PETITIONER
Jim Alan Adams
2233 Avenue G
Bay City, Texas 77414

THE STATE OF TEXAS**NOTICE TO THE DEFENDANT:**

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.":

TO: ROBERT PIERCE
2323 AVENUE E
BAY CITY, TEXAS 77414

OR WHEREVER HE MAY BE FOUND

Defendant, Greeting:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition on or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable District Court of Matagorda County, Texas at the Court House of said County in Bay City, Texas.

Said Petition was filed the 1st day of February, 2013 in this case, numbered 13-E-0057-C on the docket of said court, and styled,

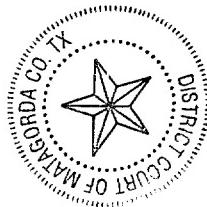
NATHAN GENZER
VS
ROBERT PIERCE

The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition accompanying this citation and made a part hereof. The officer executing this writ shall promptly serve the same according to the requirements of law, and the mandates thereof, and make due return as the law directs.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said court at office, on February 1, 2013.

BECKY DENN, DISTRICT CLERK
 MATAGORDA COUNTY, TEXAS

By 



Officer's Return

Cause No. 13-E-0057-C
130th Judicial District Court of Matagorda County
NATHAN GENZER VS ROBERT PIERCE

Address for Service:

**2323 AVENUE E
BAY CITY, TEXAS 77414 OR WHEREVER HE MAY BE FOUND**

Came to hand on the 6 day of Feb, 2013 at 9:30 o'clock A, M.
 Executed in Matagorda County, Texas by delivering to each of the within named defendants in person, a true copy of this citation with the date of delivery endorsed thereon with the accompanying copy of the Plaintiff's Original Petition, at the following times and places, to-wit:

Name Robert Prece Date/Time 2/7/13 9:30am Place, Course and Distance from Courthouse 2323 Ave E Bay Lf Tx 77414

and not executed as to the defendant,

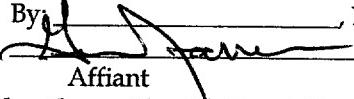
The diligence used in finding said defendant being:

and the cause or failure to execute this process is:

and the information received as to the whereabouts of said defendant being:

Total fee for serving this citation:

 Officer _____
 _____, County, Texas
 By _____ Deputy _____

Affiant
Complete if you are a Person other than a Sheriff, Constable or Clerk of the Court

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is Gene Prece, my date of birth is 2/28/47
 (First Middle, Last)

And my address is 2139 Ave G #7 Bay Lf Tx 77414
 (Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Matagorda County, State of Texas, on the 7 day of Feb 2013.

Declarant/Authorized Process Server

SCIT 458 Exp 7/30/14
 (Id # & expiration of certification)

3:30 FILED P
 At 30 O'Clock M

FEB - 8 2013

Becky Denn, Clerk
 Of Distinct Court, Matagorda Co., Texas
 Deputy